

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

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| STATE OF DELAWARE, |) | |
| |) | |
| |) | |
| v. |) | ID. No. 0405017780 |
| |) | Supreme Court I.D. No. 216, 2008 |
| JEROME SULLINS, |) | |
| |) | |
| Defendant. |) | |

Submitted: July 24, 2009
Decided: September 22, 2009

OPINION ON REMAND

Appearances:

Jerome Sullins, Pro Se.

James T. Wakely, Esquire, Deputy Attorney General, Wilmington, Delaware.
For the State.

JOHN E. BABIARZ, JR., JUDGE.

This is the Court's opinion on the second remand in this case. A brief history is in order.

The case began with the arrest of defendant Jerome Sullins in April of 2004 on a variety of drug charges. He posted bail, retained private counsel and the case went to trial in February of 2005. That trial ended in a mistrial and a second trial was scheduled for May. Sullins then jumped bail and absconded to Florida. He was apprehended in December, returned to Delaware and held in default of \$50,000.00 cash bail. As Sullins counsel had withdrawn after he fled, new counsel was appointed for the second trial.

The second trial took place in April of 2006. Sullins was convicted of all charges and sentenced to 20 years of incarceration, suspended after 10 years for 18 months of probation. He appealed and his conviction was upheld in August of 2007.¹

In February of 2008, Sullins, acting *pro se*, filed a motion for post-conviction relief under Criminal Rule 61. The Court summarily dismissed all but one of Sullins' claims pursuant to Criminal Rule 61(d)(4). The remaining claim the Court summarily granted as it had obvious merit. The grant had the effect of vacating one year of Sullins' suspended sentence.

Sullins appealed and the Supreme Court affirmed this Court's decision in all

¹ *Sullins v. State*, 930 A.2d 911 (Del. 2007).

particulars except one.² It remanded the case for this Court to expand the record by obtaining affidavits from defense counsel on Sullins' claim that they should have moved to suppress evidence seized in a warrantless search of Sullins' residence. Based on the affidavits as well as the pre-existing record, the Court adhered to its previous ruling and returned the case to the Supreme Court.³

The Supreme Court again remanded the case as it found an inconsistency between the Court's initial opinion on the Rule 61 motion and its opinion on Remand.⁴ In its original disposition the Court referred to the search as a "police" search. In the opinion on remand, the search was described as having been performed by probation officers. The initial description of the search as a "police" search was incorrect. The Court's error may have been caused by the fact that officers of two police departments, the Wilmington Department of Police and the Delaware State Police were involved with Sullins' apprehension along with probation officers. The Court regrets the substantial confusion this misstatement caused to the Supreme Court.

The record, however, is crystal clear that the search was performed by

² *Sullins v. State*, No. 216, 2008 (Del. Supr. Feb. 2, 2009) (Unpublished Order) ("Remand Order").

³ See Superior Court Opinion on Remand, 2009 WL 1065856, at *1 (Del. Super. Apr. 20, 2009).

⁴ *Sullins v. State*, No. 216, 2008 (Del. Supr. July 23, 2009) (Unpublished Order).

probation officers. In the affidavit of Sullins' first attorney, John Malik, which was obtained pursuant to the Supreme Court's first remand order, Mr. Malik states as follows:

“5. Detective Clemens relayed this information to probation officer Robyn Doherty who requested authorization from a supervising probation officer to permit an administrative search of 2223 North Carter Street where Defendant Sullins resided. An administrative search was conducted. . .



10. Counsel did not file a pretrial suppression motion in the instant case. This was because in counsel's opinion, the facts upon which the search was predicated established probable cause for the administrative search conducted by the probation officers and the Department of Corrections Guidelines for searches of probationers residences were followed prior to the search of the North Carter Street residence.”

Sullins' second attorney Jan A.T. Van Amerongen also filed an affidavit indicating that the search was conducted by probation officers. In addition, he attached copies of reports of the Wilmington Department of Police, the Delaware State Police and the Bureau of Community Corrections (the Probation Office) all of which explicitly state that the search was conducted by probation officers. Also attached to the affidavit was the Arrest-Search Checklist of the probation office, appropriately filled out and signed by the proper officer.

Finally, the Court must note that Sullins in his filings in this Court, which are

part of the Supreme Court record, acknowledges that the search was conducted by the probation officers. In his Rule 61 motion Sullins states:

“Trial council (sic) failed to file a suppression motion presenting evidence to support a finding that search of his home *by probation officers* for controlled substances was a subterfuge for a criminal investigation.” (Emphasis supplied)

Sullins also filed a memorandum in support of his motion in which he repeatedly states that the search was conducted by probation officers.

The record is so clear on this issue that the Court has some doubt that it has correctly understood the Supreme Court’s inquiry on remand. Be that as it may, there is no doubt that the search was a proper administrative search conducted by probation officers.

The previous rulings of this Court are unchanged.

IT IS SO ORDERED.

John E. Babiarz, Jr.

Judge John E. Babiarz, Jr.

JEB,Jr./bjw
Original to Prothonotary